

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

TERRENCE BERNARD STOKELY,

Petitioner,

v.

Civil Action No. 5:07CV97
(STAMP)

JOE DRIVER, Warden and
LAPPINS, Director of the
Bureau of Prisons,

Respondents.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE

I. Procedural History

On July 30, 2007, the plaintiff, Terrence Bernard Stokely, filed a pro se¹ petition for a writ of mandamus. He also sought leave to proceed in forma pauperis² and filed an Affidavit in Support of Request to Proceed in Forma Pauperis, a certified copy of his inmate account statement, ledger sheets, and a consent to collection of fees from trust account. This matter was referred to United States Magistrate Judge James E. Seibert for report and recommendation pursuant to Local Rule of Prisoner Litigation Procedure 83.09.

¹"Pro se" describes a person who represents himself in a court proceeding without the assistance of a lawyer. Black's Law Dictionary 1237 (7th ed. 1999).

²"In forma pauperis" describes the permission granted to a poor person to proceed without liability for court fees or costs. Black's Law Dictionary 779 (7th ed. 1999).

On August 2, 2007, Magistrate Judge Seibert entered a report and recommendation recommending that the petitioner's application to proceed without prepayment of fees be denied. No objections were filed.

II. Standard of Review

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. However, failure to file objections to the magistrate judge's proposed findings and recommendation permits the district court to review the recommendation under the standards that the district court believes are appropriate and, under these circumstances, the parties' right to de novo review is waived. See Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). Because petitioner did not file objections, this Court reviews the report and recommendation of the magistrate judge for clear error.

III. Discussion

Based upon the ledger sheets and certified copy of the inmate account statement submitted by the petitioner, the magistrate judge found that the petitioner's account on July 21, 2007 showed a balance of \$400.52 and that the petitioner, therefore, has sufficient funds to pay in full the \$350.00 filing fee. This Court concludes that the magistrate judge's findings are not clearly

erroneous.³ Accordingly, this Court finds that the petitioner's request to proceed without prepayment of fees should be denied.

IV. Conclusion

For the reasons set forth above, this Court finds that the magistrate judge's recommendation is not clearly erroneous and hereby AFFIRMS and ADOPTS the report and recommendation of the magistrate judge in its entirety. Accordingly, the petitioner's request for leave to proceed in forma pauperis is DENIED. Further, it is ORDERED that the petitioner pay the full filing fee on or before February 23, 2008. Failure to pay the full filing fee on or before February 23, 2008 will result in dismissal of the petitioner's complaint.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the pro se petitioner and to counsel of record herein.

DATED: January 22, 2008

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE

³The petitioner's last name, Stokely, was misspelled as "Stokey" in the magistrate judge's report and recommendation. However, this error is immaterial to the magistrate judge's findings concerning the petitioner's ability to pay filing fees.